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06-CV-00333-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RXSALES PRESCRIPTIONS SALES
COMPANY, LLC,

Plaintiff,

v.

BLUE FROG MOBILE, INC.; and IAN
EISENBERG, individually and on behalf of
his marital community,

Defendants.

Civil Action No.

CV 06-0333

COMPLAINT FOR TRADEMARK
INFRINGEMENT AND FALSE
DESIGNATION OF ORIGIN AND
UNFAIR COMPETITION,
CYBERSQUATTING AND CONSUMER
PROTECTION ACT VIOLATION

JURY TRIAL REQUESTED

Plaintiff RxSales Prescriptions Sales Company, LLC ("RxSales") hereby alleges the following causes of action against Defendants:

I. PARTIES

1. RxSales is a corporation organized and existing under the laws of Saint Kitts and Nevis, having its principal place of business in Kenmore, Washington.

2. Blue Frog Mobile, Inc. ("Blue Frog") is a Washington corporation having a principal place of business at 520 Pike Street, 24th Floor, Seattle, Washington.

3. On information and belief, Defendant Ian Eisenberg ("Eisenberg") is a Washington resident, the president of Blue Frog and is directly responsible for controlling all

COMPLAINT FOR TRADEMARK INFRINGEMENT,
CYBERSQUATTING AND CPA VIOLATION - 1

Civil Action No.

RXSA-6-1001P01CMP

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1 aspects of the business affairs of the company. All activities of Blue Frog alleged herein were
 2 carried out under the direction and control of Eisenberg. All acts of Eisenberg as alleged herein
 3 were done for the benefit of his marital community, which includes Ian Eisenberg.
 4

5 II. NATURE OF THE ACTION

6 4. This is an action for preliminary and permanent injunctive relief and monetary
 7 damages arising out of Defendants' unauthorized use of RxSales' CHATDOLLARS trademark,
 8 trade name and domain name used with affiliate programs used in association with text, voice
 9 and electronic messaging and online chat services. This action involves Defendants'
 10 infringement of RxSales' trademarks as well as unfair competition based on the manner in which
 11 Defendants have mislead the public regarding the source for products and services and domain
 12 name cybersquatting. This action also involves allegations of violation of the Washington State
 Consumer Protection Act, R.C.W. 19.86.020.

13 III. JURISDICTION AND VENUE

14 5. This action arises, in part, under the trademark laws of the United States of
 15 America, 15 U.S.C. § 1051 *et seq.* Jurisdiction over the trademark infringement, false
 16 designation of origin and federal unfair competition and cybersquatting claims is conferred upon
 17 this Court by 28 U.S.C. §§ 1331 and 1338. Supplemental jurisdiction is conferred upon this
 18 Court over the remaining related state claim as it is derived from a common nucleus of operative
 fact that form part of the same case or controversy. 28 U.S.C. § 1367(a).

19 6. This Court has personal jurisdiction over each of the Defendants and venue is
 20 proper in the Western District of Washington because the Defendants reside, do business, and
 21 can be found therein.

22 IV. GENERAL ALLEGATIONS

23 7. RxSales has been a leading provider of affiliate programs used in association with
 24 text, voice and electronic messaging and online chat services throughout the United States and
 25

1 the world under the CHATDOLLARS trademark and trade name and at the *chatdollars.com*
2 website since at least as early as 2003.

3 **A. Rxsales' TRADEMARK RIGHTS**

4 8. Rxsales is the owner of intellectual property rights associated with the trademark
5 CHATDOLLARS for use with affiliate programs used in association with text, voice and
6 electronic messaging and online chat services. Rxsales' trademark rights include U.S. Federal
7 Trademark Registration No. 3,026,646 and Washington State trade name registration for
8 CHATDOLLARS. Rxsales is also the owner of geographically based common law rights in the
9 CHATDOLLARS trademark stemming from continuous and substantially exclusive use of the
10 trademark.

11 9. Rxsales markets, promotes and provides its products and services throughout the
12 United States and the world in association with its CHATDOLLARS trademark and trade name,
13 including at its *chatdollars.com* website. Rxsales' promotion, advertising and use of its trade
14 name, trademark and domain name serves to identify Rxsales' products and services, distinguish
15 them from those of others, and identify Rxsales as the source of those products and services. As
16 a result, the trademark, trade name and domain name have become valuable assets of Rxsales
17 and a symbol of its goodwill to the general public. Moreover, Rxsales' use of its trademark and
18 domain name has conditioned Internet users to find Rxsales and its products and services
19 through its website.

20 **B. DEFENDANTS' WRONGFUL ACTIONS**

21 10. Rxsales has recently learned that on or about December 30, 2005, Defendants
22 registered the domain name *smschatdollars.com*, and sometime thereafter began promoting and
23 providing affiliate programs used in association with text, voice and electronic messaging and
24 online chat services in association with the SMSCHATDOLLARS mark and domain name. The
25 SMSCHATDOLLARS mark and corresponding *smschatdollars.com* domain name are
confusingly similar to Rxsales' CHATDOLLARS trademark and *chatdollars.com* domain name.

1
2 Indeed, Defendants' SMSCHATDOLLARS and *smschatdollars.com* mark and domain name are
3 identical to RxSales' trademark and domain name save for the addition of the generic acronym
4 SMS, which stands for "short message service." Defendants' use of the SMSCHATDOLLARS
5 mark, including as a domain name for use with Internet websites, is confusingly similar to
6 RxSales' CHATDOLLARS trademark, particularly given that both marks are used with similar
7 affiliate programs used in association with text, voice and electronic messaging and online chat
8 services.

9 11. These acts of Defendants have caused and, unless restrained by the Court, will
10 continue to cause serious and irreparable harm to RxSales and to the goodwill associated with its
11 trademark. Moreover, Defendants have and will continue to unjustly benefit at RxSales'
12 expense—from gains, profits and advances derived from the products sold and services provided
13 in association with the infringing SMSCHATDOLLARS mark.

14 12. The impact of Defendants' trademark infringement and unfair competition is
15 particularly acute in the context of Internet products and services. Defendants' unauthorized use
16 of RxSales' trademark allows Defendants to misdirect Internet search engines and, ultimately,
17 the public from RxSales' website to that owned, hosted or operated by Defendants. In so doing,
18 Defendants unfairly compete with RxSales or otherwise unjustly benefit from Defendants
19 wrongful actions.

20 13. Defendants have no license from RxSales. Nevertheless, Defendants have
21 deliberately and willfully infringed RxSales' trademark despite knowledge of the
22 CHATDOLLARS trademark and of RxSales' provision of products and services in association
23 with the trademark, including at the *chatdollar.com* website. On information and belief,
24 Defendants secured the *smschatdollars.com* domain name with the bad faith intent to divert
25 consumers from RxSales' online location to a site accessible at *smschatdollars.com* in a manner
that harms the goodwill represented by the CHATDOLLARS trademark. On information and
belief, Defendants' actions have been either for commercial gain or with the intent to tarnish or

disparage the CHATDOLLARS trademark by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the *smschatdollars.com* website.

V. CAUSES OF ACTION

COUNT I: TRADEMARK INFRINGEMENT

14. RxSales realleges the preceding paragraphs of this complaint.

15. Defendants have, without consent of RxSales, used in commerce a reproduction, counterfeit, copy and/or colorable imitation of RxSales' registered CHATDOLLARS trademark in connection with affiliate programs used in association with text, voice and electronic messaging and online chat services in a manner that is likely to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. § 1114.

COUNT II: FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION

16. RxSales realleges the preceding paragraphs of this complaint.

17. Defendants have engaged in false designation of origin and unfair competition by knowingly and willfully creating an affiliation or connection between them and RxSales in order to confuse and mislead the public as to the source of the related products and services in violation of 15 U.S.C. § 1125(a).

COUNT III: CYBERSQUATTING

18. RxSales realleges the preceding paragraphs of this complaint.

19. RxSales owns all rights to the CHATDOLLARS trademark that forms in main part Defendants' *smschatdollars.com* domain name that is used in Internet commerce. At the time Defendants registered their domain name, RxSales' CHATDOLLARS trademark was distinctive, protectible and/or famous.

20. By virtue of Defendants' redirection of Internet users to its own websites at *smschatdollars.com*, Defendants, with a bad faith intent to profit, within the meaning of 15 U.S.C. § 1125(d)(1)(B), have been trafficking and using, and continues to traffic and use, domain names that are identical or confusingly similar to or dilutive of the RxSales' registered

1 trademark and trade name in violation of 15 U.S.C. § 1125(d)(1)(A). RxSales never provided
2 authorization to Defendants to use its trademark or trade name or confusingly similar marks or
3 domain name.
4

5 21. As a result of Defendants' unlawful cybersquatting and cybersquatting by
6 appropriation of RxSales' domain name, RxSales will be damaged and will continue to be
7 irreparably harmed unless Defendants' unlawful conduct is enjoined.

8 **COUNT IV: CONSUMER PROTECTION ACT VIOLATION**

9 22. RxSales realleges the preceding paragraphs of this complaint.

10 23. Defendants have intentionally confused and misled the public in Washington
11 State and throughout the country. Defendants' actions constitute unfair methods of competition
12 and unfair deceptive acts and practices in the conduct of its trade or business. Defendants'
13 actions have affected and continue to affect the public interest in Washington State as well as in
14 other parts of the country. Defendants have demonstrated its propensity for repetition of the
15 wrongful actions. As a direct and causal result of Defendants' unfair business practices and
16 unfair and deceptive acts, RxSales has been damaged in an amount to be proven at trial.

17 24. Defendants' actions are in violation of the Washington State Consumer Protection
18 Act, R.C.W. 19.86.020.

19 **PRAYER FOR RELIEF**

20 RxSales requests the following alternative and cumulative relief:

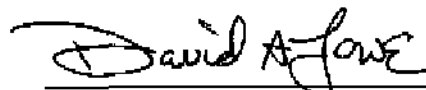
- 21 1. Preliminary and permanent injunctions against Defendants and all officers,
22 agents, affiliates, employees, representatives, and all persons in active concert or
23 participation with them in any way, from use of the mark CHATDOLLARS or
24 any other marks confusingly similar thereto, including without limitation
25 SMSCHATDOLLARS, as a service mark, trademark, trade name, domain name
or part thereof alone or in combination with other words, symbols, styles, titles or
marks in connection with the provision of affiliate programs and related services,
pursuant to 15 U.S.C. § 1116 and other applicable law.
2. An order that Defendants deliver up for destruction all products, printed material,
stationery, business forms, signs, advertisements, brochures, promotional

material, manuals, pamphlets, labels, packages, containers, and all other materials bearing the mark CHATDOLLARS or any other marks confusingly similar thereto, including without limitation SMSCHATDOLLARS, or any derivative, colorable imitation, or confusingly similar marks, together with all means for making or reproducing the same, pursuant to 15 U.S.C. § 1118 and other applicable law.

3. An order that Defendants, at their expense, take affirmative steps to notify all affiliates, affiliate agents, affiliate directory or listing services and Internet search organizations of the injunction requested herein including, specifically, that a cessation of all use of the mark CHATDOLLARS or any other marks confusingly similar thereto, including without limitation SMSCHATDOLLARS, is required, and provide a detailed report to RxSales describing all steps taken to provide such notification.
4. An order that Defendants immediately assign or otherwise transfer to RxSales, at their expense, ownership of all domain names incorporating in whole or part the CHATDOLLARS trademark, or any other marks confusingly similar thereto, including without limitation *smschatdollars.com*.
5. An order requiring Defendants to file with this Court and serve on RxSales within thirty days of service of this order a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the terms of the ordered relief.
6. An award of damages sufficient to compensate RxSales for all injury sustained as a result of Defendants' wrongful trademark infringement, including wrongful profits of Defendants, pursuant to 15 U.S.C. § 1117 and other applicable law.
7. Exemplary damages and all of RxSales' litigation expenses, including reasonable attorneys' fees and costs, pursuant to 15 U.S.C. § 1117 and other applicable law.
8. An assessment of prejudgment interest and costs.
9. Such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 10th day of March, 2005.

BLACK LOWE & GRAHAM^{PLLC}



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